IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10552 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MS LOKHANDE, 874420034

Versus

GROUP COMMANDANT

Appearance:

1. Special Civil Application No. 10552 of 2001
MR VM DHOTRE for Petitioner No. 1
MR ANANT S DAVE for Respondent No. 1,3
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The petitioner in this petition under Article 226 of the Constitution of India has prayed that he should be promoted as Head-constable or in the alternative to be given benefits of Assured Career Progressive Scheme (in short ACP Scheme) with all consequential benefits including monetary benefits.

2. The petitioner joined as Central Industrial Security Force Constable (in short CISF) on February 23, 1987 at O.N.G.C., Mahim. After serving at different states somewhere in the year 1998 the petitioner was again posted at CISF Unit, SCA/PRL, Ahmedabad. It is the grievance of the petitioner that even though he joined as CISF Constable in the year 1987, he has not been promoted to the next higher post as Head-constable for all these years. The Department of Ministry of Personnel Public Grievance and Pension of Government of India on August, 9, 1999 has evolved the ACP Scheme so as to grant financial benefits to the employees who could not be granted regular promotion. Under the scheme in question, 2 promotions are envisaged, first that would be granted after 12 years of regular service and the second to be made available after 12 years next after the grant of the ACP Scheme. The petitioner addressed letter dated 11.9.2000 to the Dy.Commandant, SAC, Ahmedabad requesting him to include his name in DPC with a view to avail the benefits of ACP Scheme. The petitioner also addressed many communications to Dy.Commandant, SAC, Ahmedabad requesting him to show his confidential reports for the year 1994-99. It appears that in pursuant to the letter dated May 3, 2001, confidential reports for the year 1994-99 were shown to the petitioner on June 18, 2001. Following are the gradings of the ACRs. for the year 1994-2000 :

1999	Good	
1996	Average	
1997	Below Average	
1998	Average	
1999	Good	
2000	Company	Commander recorded ACR as very good. However, Asst.Commandant recorded gradation as average.

It is averred in the petition that adverse remarks for

the year 1997 which is `below average' was not communicated to the petitioner. The petitioner wanted to know from Group Commandant-respondent no. 1 herein as to for what reasons he was deprived of the benefits of ACP Scheme and for that he addressed various letters between March, 2001 and May 2001. The petitioner was informed by the Dy.Commandant, SAC, Ahmedabad that the letter has been forwarded for necessary action. Except the said reply, no other communication has been received by the petitioner. The petitioner has therefore, moved this Court by way of this petition making a grievance that he being a member of S.C.Community and even on the basis of his gradation in ACR which is average, he becomes entitled to get the benefits of ACP Scheme and there is no reason to withhold the benefit of the said scheme and/or to grant regular promotion.

3. One Jagdishsingh Saini has filed affidavit-in-reply on behalf of respondent no. 1. In para 4 of the reply it is stated as under : "With reference to para 2 of the memo of the petition is concerned, I say and submit that the ACP Scheme covers all such Group B, C and D employees of CISF who for reason of non promotion for 12 years from the date of their direct appointment and have also qualified promotion cadre course as per recruitment rules of the post, Under this scheme financial upgradation has to be given and suitability of the person is to be considered on the basis of ACRs and punishments for the past 5 years. As such this scheme has been effected w.e.f. 9.8.99. The said petitioner obtained ACR grading as follows : 1995 Good, 1996 Average, 1997 Below Average, 1998 Average and 1999 Good. As per service document during the year 1997-98 he was awarded three minor punishments for which 3 marks are deducted in each case. The aggregate passing marks is 50 for all personnel irrespective of the category to which they belong. The screening committee of ACP headed by Group Commandant, CISF Group Hqrs. Ahmedabad on September 20, 2000 has declared the individual as "NOT YET FIT" vide their office letter No. E-42099/GHA/ACP/2000/8032 dated December 12, 2000. As regards contention of the petitioner for regular promotion to the rank of Head Constable it is submitted that same will be given as per his seniority as and when vacancies arises as per laid down procedure.

4. In para 6 of the reply it is stated as under : "With reference to para 4 of the memo of petition is concerned, I state and submit that the benefit of ACP Scheme are limited to higher pay scale and do not

automatically entitle him to the benefits of the next higher rank. Hence the basic criterion to allow the higher pay scale under ACP should be whether a person is working in same pay scale for the prescribed period of 12/24 years. Grant of higher pay scale under ACP Scheme shall be similar to a normal departmental procedure for regular promotion as prescribed in the general instruction in this record. Departmental promotion committee, for selection of candidate for considering their high standard of performance at various level and the suitability of a person on the basis of last 5 years service records. On the basis of his fulfilling the terms and conditions of promotion policy instructions and Government of India office memorandum vide letter No. 35034/1/97-Estt.(D) dated 9.8.99 and FHQRs. circular no. 16/2000 issued under letter No. E_42011/Cir/FHQ/Estt.I/2000/73 dated 18.2.2000 and individual declared fit/unfit. The said petitioner's case was considered for the ACP Scheme by the duly constituted DPC and he was declared unfit for ACP benefit based on the overall service records.

5. In para 9 of the said reply it is stated that "with reference to para 7 of the memo of petition is concerned, I say and submit that the statement made in the said para regarding ACR-2000. Company Commander recorded ACR as "very good". Assistant Commander, however, being the reviewing authority did not agree with the same and recorded gradation as "average". Reviewing officer did not agree with the remarks of reporting officer considering his performance during the relevant period. As such, he was graded "average" by the Assistant Commandant in the year 2000. As far as the grading "below average" for the year 1997 is concerned, as per service documents it was not communicated to the individual.

6. From the averments of the reply it is clear that the case of the petitioner was considered by the screening committee of ACP headed by Group Commandant wherein the suitability of the petitioner was considered on the basis of ACRs. and punishment, if any given in the relevant period. From the reply it is an undisputed fact that ACT for the year 1997 which was graded as "below average" was not communicated to the petitioner. The adverse remark which is not communicated to the individual is required to be ignored. Thus, from the admitted position it is clear that the petitioner had obtained ACR/graded good for 1995, average for 1996, average for 1998, good for 1999 and average for year 2000. The petitioner in his affidavit-in-rejoinder has

pointed out that a letter dated 11/15.1.2001 of CISF (Ministry of Home Affairs) prescribes the marks allotted to gradation in ACRs. 9 marks are allotted to gradation average and 12 marks are allotted to gradation good. Thus, calculating the marks obtained by the petitioner for the gradation of ACRs. of the years 1995-2000, the petitioner has in fact obtained aggregate 51 marks. Even deducting 9 marks for 3 minor punishments for 3 years, the total would come to 42. On the basis of communication dated 11/15.1.2001 of CISF (Ministry of Home affairs), the aggregate marks for SCs, STs. are 40 for promotion from Constable to Head Constable for a total period of 5 years. Therefore, in our opinion, the petitioner is entitled to get the benefit of ACP Scheme with effect from year 2000. There is no justification to refuse and/or deny the benefits of the ACP Scheme to the petitioner. We accordingly, allow the petition by directing the respondents to consider the case of the petitioner for promotion with effect from year 2000 and/or to grant benefits of ACP Scheme with all consequential benefits arising thereof with effect from year 2000.

Rule is made absolute accordingly. There shall be no order as to costs.

(K.R.VYAS, J)

(SHARAD D DAVE, J)

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